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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LAKSHMI ARUNACHALAM,
Plaintiff,
v.
APPLE, INC., et al.,
Defendant.

Case No.5:18-cv-01250-EJD

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS; DENYING PLAINTIFF'S MOTIONS FOR STATEMENT OF DECISION; DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT; DENYING PLAINTIFF'S MOTION TO DISQUALIFY; DENYING WITHOUT PREJUDICE FULTON'S MOTION TO SEVER

Re: Dkt. Nos. 32, 56, 69, 70, 101, 132, 149, 151-157, 161, 164, and 168

I. INTRODUCTION

Plaintiff Dr. Lakshmi Arunachalam ("Plaintiff") brings this action alleging fourteen claims for relief generally relating to patent infringement, RICO violations, trade secret misappropriation, treason, and violations of federal and state antitrust laws. Defendants Apple Inc., Samsung Electronics America Inc., Facebook Inc., Alphabet Inc., Microsoft Corp., IBM Corp., SAP America Inc., JPMorgan Chase and Co., FISERV Inc., Wells Fargo, Citigroup, Fulton Financial Co., and the Eclipse Foundation (collectively "Defendants") move to dismiss Plaintiff's complaint. Additionally before the court are Plaintiff's motions for the court to give a statement of decision, motion for summary judgment, and motion to disqualify David Bloch and Winston & Strawn LLP as counsel for Wells Fargo and Fulton Financial, and Fulton Financial's motion to sever. The Court finds it appropriate to take the motions under submission for decision without oral argument pursuant to Civil Local Rule 7-1(b).

II. BACKGROUND

On February 26, 2018, Plaintiff filed a 144-page complaint against 13 named defendants

1 and 1-100 unnamed Does entitled “Corrupt Antitrust Export/Import Infringement(s) Colored By
2 Law And Authority To Protect Plaintiff’s Public Right Against A Constitutional Tort.” Plaintiff
3 alleges that she is the inventor of the Internet of Things (IoT) and IoT devices whose current
4 market exceeds multi-trillion dollars; that she is the founder of three start-up companies, Pi-Net
5 Inc., WebXchange, Inc. and E-point, Inc.; that she is the assignee of eight patents; and that she lost
6 her business due to Defendants’ conduct. Compl. ¶ 2-3. Plaintiff alleges that without her
7 inventions, Apple and Samsung devices would not be smart devices, and that just about every
8 enterprise is infringing her patents. Compl. ¶¶ 13, 18.

9 The premise of Plaintiff’s claims is that she has been denied access to justice by “the
10 USPTO/PTAB, the Federal Circuit, three Federal District Courts, the United States Supreme
11 Court, the Legislature, the Department of Justice and the International Trade Commission, because
12 of their failure to enforce the ‘*Law of the Land*’ respecting patent contract grants issued by the
13 government.” Compl. ¶ 20. Plaintiff alleges that she entered into a contract with the USPTO, and
14 that the USPTO/PTAB breached that contract by failing to uphold patent prosecution history
15 estoppel, by conducting re-examinations on Plaintiff’s patents, and by failing to follow the
16 Supreme Court’s decision in *Fletcher v. Peck*, 10 U.S. 87 (1810). This suit resembles one of the
17 other 89 actions initiated by the Plaintiff,¹ some of which have been filed against the judiciary,
18 administrative agencies, judges and officials, including the undersigned judge, and other attorneys
19 the Plaintiff has litigated against in reaction to final dispositions. Similarly, in this case Plaintiff
20 alleges that Defendants engaged in treason by failing to report certain federal district judges for
21 their alleged breach of their “solemn oaths of office.” Compl. ¶ 112-14.

22 **III. STANDARDS**

23 A motion to dismiss under Fed. R. Civ. P. 12(b)(6) tests the legal sufficiency of claims
24 alleged in the complaint. *Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir.
25 1995). Dismissal “is proper only where there is no cognizable legal theory or an absence of
26 sufficient facts alleged to support a cognizable legal theory.” *Navarro v. Block*, 250 F.3d 729, 732
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28 ¹ PACER search returns 71 civil cases and 18 appellate cases for a total of 89 cases initiated by the Plaintiff.

1 (9th Cir. 2001). In considering whether the complaint is sufficient to state a claim, the court will
2 take all material allegations as true and construe them in the light most favorable to the plaintiff.
3 *NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986). However, this principle is
4 inapplicable to legal conclusions; “threadbare recitals of the elements of a cause of action,
5 supported by mere conclusory statements,” are not taken as true. *Ashcroft v. Iqbal*, 556 U.S. 662,
6 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

7 *Pro se* pleadings must be construed liberally. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th
8 Cir. 2000). In construing *pro se* pleadings liberally, the plaintiff is not entitled to every
9 conceivable doubt; rather the court is obliged to draw only reasonable factual inferences in the
10 plaintiff’s favor. *Porter v. Ollison*, 620 F.3d 952, 958 (9th Cir. 2010). Additionally, a *pro se*
11 plaintiff is entitled to a liberal amendment policy. *Eldridge v. Block*, 832 F.2d 1132, 1135–37 (9th
12 Cir. 1987).

13 **IV. DISCUSSION**

14 **A. The Complaint Fails to Satisfy Rule 8.**

15 As an initial matter, Plaintiff’s complaint is subject to dismissal under Rule 8 of the
16 Federal Rules of Civil Procedure, which requires a complaint to provide “a short and plain
17 statement of the claim showing that the pleader is entitled to relief.” The failure to comply with
18 Rule 8 is a basis for dismissal that is not dependent on whether the complaint is without merit.
19 *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir. 1996). Accordingly, even claims which are not
20 on their face subject to dismissal under Rule 12(b)(6) may still be dismissed for violating Rule
21 8(a). *Id.*

22 Plaintiff’s robust 144-page complaint is confusing, disorganized, and contains legal
23 terminology without setting forth facts showing that she is entitled to relief. As such, dismissal is
24 proper under Rule 8. See *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047,
25 1059 (9th Cir. 2011) (complaints are subject to dismissal if they are “needlessly long,” “highly
26 repetitious, confusing, or consist of incomprehensible rambling”).

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1 **B. The Complaint Fails to State a Claim Under Rule 12(b)(6).**

2 Plaintiff's complaint is also subject to dismissal under Rule 12(b)(6) for failure to state a
3 claim. Defendants' motions to dismiss explain in great length why Plaintiff fails to meet Rule
4 12(b)(6). Collectively, Defendants each argue that the Plaintiff's complaint does not allege enough
5 factual content to state a plausible claim, and that Plaintiff is not entitled to relief as a matter of
6 law. Although complaints filed by a *pro se* plaintiff are held to less stringent standards than formal
7 pleadings drafted by lawyers, Plaintiff is not excused from alleging sufficient facts on which a
8 recognized legal claim could be based. *Mylviya v. City of San Jose*, No. 05-cv-05427-RMW, 2006
9 WL 2529511, at *2 (N.D. Cal. Aug. 31, 2006).

10 *1. Plaintiff's Claims for Patent Infringement (Count I)*

11 To state a claim for patent infringement, the complaint must "contain factual allegations
12 that the accused product practices every element of at least one exemplary claim." *Noviatz, Inc. v.*
13 *inMarket Media, LLC*, No. 16-cv-06785-EJD, 2017 WL 2311407, at *3 (N.D. Cal. May 26, 2017).
14 The basic pleading standards articulated in *Twombly* and *Iqbal* apply to patent infringement
15 claims. *Windy City Innovations, LLC v. Microsoft Corp.*, 193 F. Supp. 3d 1109, 1114 (N.D. Cal.
16 2016).

17 Here, Plaintiff's complaint fails to allege direct infringement of the '340 Patent by the
18 Defendants. The Complaint lacks any recital to support an allegation that a product or service
19 offered by the Defendants practices every element of at least one claim of the '340 Patent. Rather,
20 Plaintiff's complaint contains conclusory statements that Defendants have infringed the '340
21 Patent.

22 Because Plaintiff has failed to allege a claim for direct infringement, Plaintiff's indirect
23 infringement claims also fail. Direct infringement is a prerequisite to establishing induced and
24 contributory infringement. *Fujitsu Ltd. v. Netgear, Inc.*, 620 F.3d 1421, 1426 (Fed. Cir. 2010).
25 Moreover, Plaintiff has not pled the requisite knowledge requirement for indirect infringement.
26 See *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 765-66 (2011) (contributory
27 infringement and induced infringement require knowledge of the existence of the patent and
28 knowledge of the underlying acts of infringement). For the reasons above, Plaintiff's patent

1 infringement claims (Count I) are dismissed with leave to amend.

2 2. *Plaintiff's Antitrust Claims (Count II and VIII-XIII)*

3 The Complaint generally references Section 1 and 2 of the Sherman Act. Section 1 of the
4 Sherman Act prohibits “[e]very contract, combination in the form of trust or otherwise, or
5 conspiracy, in restraint of trade or commerce among the several States.” 15 U.S.C. § 1. Section 2
6 of the Sherman Act makes it unlawful for a firm to “monopolize.” 15 U.S.C. § 2. To assert a claim
7 under Section 1 or Section 2 of the Sherman Act, a plaintiff must first demonstrate that it has
8 suffered an “antitrust injury” sufficient to provide standing. *GSI Tech v. United Memories, Inc.*,
9 No. 5:13-cv-01081, 2014 WL 1572358, at *3 (N.D. Cal. Apr. 18, 2014). This injury must consist
10 of “(1) unlawful conduct, (2) causing injury to plaintiff (3) that flows from that which makes the
11 conduct unlawful, and (4) that is of the type the antitrust laws were intended to prevent.” *Somers v.*
12 *Apple, Inc.*, 729 F.3d 953, 963 (9th Cir. 2013).

13 Plaintiff alleges that competition by Defendants prevented her from monopolizing her
14 inventions and that the Defendants conspired to kill her patents and in doing so, prevented and
15 excluded competition of Plaintiff's company. Compl. ¶ 57. Plaintiff claims “[b]ut for the injury
16 inflicted upon Plaintiff by each Defendant through anti-competitive conduct and antitrust
17 violations, Plaintiff should have been the largest technology company in the world.” Compl. ¶
18 200. These speculative and conclusory allegations are insufficient to establish a violation of the
19 Sherman Act.

20 Plaintiff alleges that “Defendants entered into a conspiracy and price fixing amongst IBM,
21 SAP, Apple, Samsung, Microsoft, and JPMorgan, aiding and abetting them to steal Plaintiff's
22 patented technology and source code and distribute it without paying Plaintiff a license fee for use
23 of her patented technology.” Compl. ¶ 251. The Defendants' failure to pay her a license fee,
24 however, does not constitute an antitrust injury. In *Cascades Computer Innovation, LLC v. RPX*
25 *Corp.*, 719 F. App'x 553, 555 (9th Cir. Dec. 11, 2017), the Ninth Circuit recently held that
26 because defendants had been found not to infringe the *Cascades* patent, they “therefore did not
27 need to pay … for a license” and the “failure to license the patent was not a cognizable antitrust
28 injury.” Similarly, Plaintiff in this case fails to allege a viable patent infringement claim.

1 Therefore, Plaintiff's claim that Defendants' failure to pay her license fees constitutes an antitrust
2 injury is without merit. Plaintiff's antitrust claims (Count II and VIII-XIII) are dismissed with
3 leave to amend.

4 3. Plaintiff's RICO Claims (Count III)

5 Plaintiff alleges Defendants violated the Racketeer Influenced and Corrupt Organizations
6 Act of 1970 ("RICO"), 18 U.S.C. § 1962(b), (c) and (d). To state a claim under 18 U.S.C. §
7 1962(b), a plaintiff must allege "(1) the defendant's activity led to its control or acquisition over a
8 RICO enterprise, and (2) an injury to plaintiff resulting from defendant's control or acquisition of
9 a RICO enterprise." *Wagh v. Metris Direct, Inc.*, 363 F.3d 821, 830 (9th Cir. 2003). To state a
10 claim under § 1962(c), a plaintiff must allege "(1) conduct (2) of an enterprise (3) through a
11 pattern (4) of racketeering activity." *Odom v. Microsoft Corp.*, 486 F.3d 541, 547 (9th Cir. 2007)
12 (en banc). Further, in this circuit a RICO claim based on acts of fraud must comply with the
13 pleading requirements laid out in Fed. R. Civ. P. 9(b), which require the plaintiff to plead enough
14 facts to give defendants notice of their particular misconduct. *Mohebbi v. Khazen*, 50 F. Supp. 3d
15 1234, 1253 (N.D. Cal. 2014).

16 There is a four-year statute of limitations applicable to RICO violations. *Rotella v. Wood*,
17 528 U.S. 549, 553 (2000). The statute of limitations for civil RICO actions begins to run when a
18 plaintiff knows or should know of the injury which is the basis for the action. *Living Designs, Inc.*
19 v. E.I. Dupont de Nemours and Co., 431 F.3d 353, 365 (9th Cir. 2005). Here, Plaintiff alleges acts
20 occurring in the early 2000s to support her claim that Defendants conspired and agreed to engage
21 in conduct in violation of RICO. Compl. ¶ 66-70. The only purported evidence of the conspiracy is
22 the "Common Public License Agreement Version 0.5", which is dated August 29, 2002, and
23 publicly available code from 2002. Compl. ¶¶ 38, 42, 45; Ex. 16. Plaintiff either knew of or should
24 have known of this evidence as early as 2002. Thus, Plaintiff's RICO claims are time barred. For
25 these reasons, Plaintiff's RICO claims (Count III) are dismissed without leave to amend.²

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² Additionally, Plaintiff's RICO claims are identical to the RICO claims brought against IBM, SAP, and
28 JPMorgan Chase in the District of Delaware. Judge Andrews dismissed Plaintiff's racketeering claims for
failure "to allege any racketeering activity, either actual or contemplated by agreement" on March 21,
2017. *Arunachalam v. IBM*, 243 F. Supp. 3d 526 (D. Del. 2017). It appears that a final judgment has

1 4. Plaintiff's Misappropriation of Trade Secrets Claims (Count IV)

2 To state a claim for misappropriation of trade secrets under the California Uniform Trade
3 Secrets Act, a plaintiff must allege two elements: (1) the existence of a trade secret, and (2)
4 misappropriation of the trade secret. *AccuImage Diagnostics Corp. v. Terarecon, Inc.*, 260 F.
5 Supp. 2d 941, 950 (N.D. Cal. 2003) (citing Cal. Civ. Code § 3426.1(b)). Like Plaintiff's RICO
6 claims, a claim for trade secret misappropriation under the California Uniform Trade Secret Act
7 must be brought within three years after the misappropriation is discovered or by the exercise of
8 reasonable diligence should have been discovered." Cal. Civ. Code § 3426.6.

9 Plaintiff's trade secret claims are dismissed without leave to amend for two reasons. First,
10 Plaintiff's claims are time barred by the three year statute of limitations under the California
11 Uniform Trade Secrets Act. Plaintiff was or should have been aware of the alleged conduct by
12 Defendants by at least 2002 when the Common Public License—that Plaintiff alleges included her
13 code—was made freely available. Compl. ¶ 77. Second Plaintiff has not alleged that a trade secret
14 existed or that she took steps to keep it secret. To the extent that a trade secret is identified in the
15 Complaint, it is exactly the same as the intellectual property publicly disclosed in Plaintiff's
16 patents. For example, Plaintiff states that her "trade secret was not a matter of common
17 knowledge" because it was directed to "real-time online, two-way Web transactions from Web
18 applications on a Web browser from multimedia IoT devices." Compl. ¶ 142. This description is
19 identical to the language of claim 31 of the '340 Patent, which is directed to "[a] real-time online,
20 two way transaction system, operating on the World Wide Web. It is well established that
21 disclosure of a trade secret in a patent places the information comprising the secret into the public
22 domain, and thus makes it ineligible for trade secret protection. See *Ultimax Cement Mfg. Corp. v.*
23 *CTS Cement Mfg., Corp.*, 587 F.3d 1339, 1355 (Fed. Cir. 2009). As such Plaintiff's trade secret
24 claims (Count IV) are dismissed without leave to amend.

25 5. Plaintiffs False Designation of Origin Claim (Count V)

26 To establish a claim for false designation of origin a plaintiff must prove "that the

27 still yet to be entered in the action. Once entered, Plaintiff's claims may be barred under the
28 doctrines of res judicata and collateral estoppel.

1 defendant (1) used in commerce (2) any word, false designation of origin, false or misleading
2 description, or representation of fact, which (3) is likely to cause confusion or mistake, or to
3 deceive, as to sponsorship, affiliation, or the origin of the goods or services in question.” *Luxul*
4 *Tech. Inc. v. Nectarlux, LLC*, 78 F. Supp. 3d 1156, 1170 (N.D. Cal. 2015).

5 Here, Plaintiff fails to plead any factual instance where any Defendant falsely advertised to
6 consumers that it was the creator of the source code allegedly taken from Plaintiff. See Compl. ¶
7 163 (“IBM does not disclose where the underlying code comes from, namely the Plaintiff”).
8 Additionally, Plaintiff fails to allege facts to show consumer confusion. To the extent Plaintiff
9 relies on the alleged fraud of the Defendants, Plaintiffs allegations fail to meet Rule 9’s
10 particularity requirement. Therefore, Count V is dismissed with leave to amend.

11 6. *Plaintiff’s Fraud Allegations Regarding Re-Exams/IPR/CBM Reviews (Count*
12 *VI)*

13 Plaintiff alleges Defendants induced enforcement of fraudulently procured Re-
14 Exams/IPR/CBM Reviews in violation of 18 U.S.C. § 1964(c). Compl. ¶ 247. However, 18 U.S.C.
15 § 1964(c) sets forth relief for a person injured under the RICO statutes. As discussed previously,
16 Plaintiff failed to allege a viable RICO claim. Thus, Count VI equally fails.

17 7. *Plaintiff’s Treason and Obstruction of Justice Claims (Count VII and XIV)*

18 Plaintiff alleges that Defendants, judges and various public officials “breached their
19 solemn oaths of office and willfully committed treason.” Compl. ¶ 249. There is no private cause
20 of action for treason. *See Hallal v. Murdel*, No. 1:16-cv-01432-DAD, 2016 WL 6494411, at *3
21 (E.D. Cal. Nov. 2, 2016) (holding plaintiff cannot bring treason claims under Title 18 because
22 treason is a criminal offense that does not provide a private right of action). Additionally, there is
23 no private cause of action for obstruction of justice under either federal or California state law.
24 *Chapman v. Chronicle*, No. 4:07-cv-04775-SBA, 2009 WL 102821, at *4 (N.D. Cal. Jan. 14,
25 2009) (“[O]bstruction of justice is not a cognizable civil claim.”). Thus, Plaintiff lacks standing to
26 bring both her treason and obstruction of justice claims. Count VII and XIV are dismissed without
27 leave to amend.

1 **C. Plaintiff's Motion to Disqualify is Denied.**

2 Plaintiff asks the Court to disqualify David Bloch ("Bloch") and the law firm Winston and
3 Strawn LLP ("WS"), and any of its counsel, from acting on behalf of and representing Wells
4 Fargo Bank and Fulton Financial Corporation. Additionally, Plaintiff asks the court to enter a
5 restraining order against David Bloch for "obstructing justice and intimidating a perceived
6 witness." Dkt. No. 164 at 3.

7 Plaintiff alleges that she entered into an attorney-client relationship with WS. *Id.* The
8 premise of Plaintiff's claims revolves around two meetings, one in 2006/2007 and another ten
9 years later in 2017. *Id.* Plaintiff contends she met with Mr. Bloch, now a partner at WS, about
10 representing her and her companies in patent litigation in 2007. She also contends that in
11 September 2017, plaintiff was invited by WS to attend meetings with several lawyers from WS to
12 possibly represent Plaintiff at the ITC. Dkt. No. 164. at 4.

13 WS acknowledges that Plaintiff attended the two meetings, but contends that neither
14 meeting created an attorney-client relationship between Plaintiff and WS. Dkt. No. 173 at 1. The
15 first meeting, on the morning of Feb. 27, 2007, took place in a public place and was of short
16 duration. Plaintiff indicated she was seeking contingency fee counsel for litigation concerning the
17 “‘178, ‘500, and ‘556 patents.” Bloch Decl. at 1; Dkt. No. 173, Ex. A. Mr. Bloch explained WS
18 does not generally handle cases on contingency and then took further steps to ensure Plaintiff
19 understood WS could not represent her by sending her an email later that day. Dkt. No. 173, Ex.
20 A. WS identifies the second meeting as a continuing education event entitled “Global Strategies
21 for IP” sponsored by WS and the Berkeley Center for Law & Technology. WS maintains that
22 Plaintiff was at the seminar and reception, but at no point did Plaintiff interact with anyone except
23 on a social basis. Dkt. No. 173, at 2. Plaintiff's reply states only that “Mr. Bloch's statements are
24 false.” Dkt. No. 189, at 4.

25 WS's unrefuted accounts of the meetings clearly show that no attorney client relationship
26 was ever formed between Plaintiff and WS. Furthermore, Mr. Bloch represents that he never
27 received any confidential information from Plaintiff. Bloch Decl. at 1. Based on the foregoing,
28 Plaintiff's motion to disqualify WS and Mr. Bloch is denied.

1 Last, Plaintiff requests that the court enter a restraining order against Mr. Bloch because he
2 allegedly obstructed justice and intimidated a perceived witness. The allegations against Mr. Bloch
3 are baseless. Plaintiff's request to disqualify counsel and enter a restraining order against David
4 Bloch is denied.

5 **D. Fulton Financial's Motion to Sever is Denied.**

6 On April 4, 2018, Fulton Financial filed a motion to sever for misjoinder, improper
7 venue, and lack of personal jurisdiction. Fulton's motion to sever is denied without prejudice to
8 renew the motion if Plaintiff files an amended complaint that satisfies the pleading requirements of
9 the Federal Rules of Civil Procedure.

10 **V. CONCLUSION**

11 Based on the foregoing, Defendants' Motions to Dismiss are GRANTED as follows:

12 Counts I, II, V, and VIII-XIII are dismissed with leave to amend.

13 Counts III, IV, VI, VII and XIV are dismissed without leave to amend.

14 Plaintiff's motions for the Court to "Give a Statement of Decision on Whether Contract Law
15 Applies to Patents" are DENIED. Plaintiff's motion for summary judgment is DENIED.
16 Plaintiff's motion to disqualify Winston and Strawn and David Bloch is DENIED. Fulton's
17 motion to sever is DENIED without prejudice.

18 Plaintiff may file and serve an amended complaint in accordance with this Order that
19 complies with Rule 8, Fed. R. Civ. P., and does not include new claims and parties, no later than
20 November 6, 2018. Failure to file and serve an amended complaint in accordance with this Order
21 will result in dismissal of the action with prejudice pursuant to Rules 8 and 41(b), Fed. R. Civ. P.
22 Any defendant served with the amended complaint is not required to respond to the amended
23 complaint unless directed to do so by the Court.

24 **IT IS SO ORDERED.**

25 Dated: October 16, 2018

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EDWARD J. DAVILA
United States District Judge